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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Moe Darbandi,
Plaintiff,
vs.
Barclays Bank Delaware; and DOES 1-10,
inclusive,
Defendants.

Case No.: 5:14-cv-4065

COMPLAINT FOR DAMAGES

**1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788, ET. SEQ.**
**2. VIOLATION OF TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227 ET. SEQ;**

JURY TRIAL DEMANDED

1 For this Complaint, Plaintiff, Moe Darbandi, by undersigned counsel, states as
2 follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Rosenthal
6 Fair Debt Collection Practices Act, California Civil Code § 1788, *et seq.* ("Rosenthal
7 Act") and repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. §
8 227, *et seq.* ("TCPA").

9 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.

10 3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that
11 Defendants transact business here and a substantial portion of the acts giving rise to
12 this action occurred here.

13 **PARTIES**

14 4. Plaintiff, Moe Darbandi (hereafter "Plaintiff"), is an adult individual
15 residing in Cupertino, California, and is a "person" as the term is defined by 47 U.S.C.
16 § 153(39).

17 5. Defendant Barclays Bank Delaware ("Barclays"), is a Delaware business
18 entity with an address of 125 South West Street Wilmington, Delaware 19801, and is
19 a "person" as the term is defined by 47 U.S.C. § 153(39).

1 6. Does 1-10 (the “Agents”) are individual agents employed by Barclays
2 and whose identities are currently unknown to Plaintiff. One or more of the Agents
3
4 may be joined as parties once their identities are disclosed through discovery.

5 7. Barclays at all times acted by and through one or more of the Agents.

FACTS

8. Within the last four year, Barclays contacted Plaintiff in an attempt to
9 collect a consumer allegedly owed by Plaintiff (the “Debt”).

10 9. At all times mentioned herein, Barclays placed calls to Plaintiff's cellular
11 telephone by using an automated telephone dialer system ("ATDS" or "predictive
12 dialer") and/or by using an artificial or prerecorded voice ("Robocalls").
13

14 10. When Plaintiff answered the calls from Barclays, he heard a recording
15
16 that instructed him to return the call to Barclays.

17 11. On or about August 1, 2014, Plaintiff returned Barclays' call and
18 requested that all further calls to his cellular telephone stop.

19
20 12. During the prior mentioned conversation, Barclays informed Plaintiff that
21 the automated calls would continue if payments were not made on time.

22 13. Despite Plaintiff's unequivocal request that all calls to his cellular
23 telephone cease, Barclays continued to place automated calls to Plaintiff at an
24 excessive and harassing rate.
25

COUNT I**VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 *et seq.***

14. Plaintiff incorporates by reference all of the above paragraphs of this
4
5 Complaint as though fully stated herein.

6 15. The Rosenthal Act prohibits unfair and deceptive acts and practices in the
7 collection of consumer debts.
8

9 16. Barclays, in the regular course of business, engages in debt collection and
10 is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).
11

12 17. Defendants caused a telephone to ring repeatedly and engaged the
13 Plaintiff in continuous conversations with an intent to annoy Plaintiff, in violation of
14 Cal. Civ. Code § 1788.11(d).
15

16 18. Defendants communicated with the Plaintiff with such frequency as to be
17 considered harassment, in violation of Cal. Civ. Code § 1788.11(e).
18

19 19. Defendants failed to comply with the provisions of 15 U.S.C. § 1692, *et*
20 *seq.*, in violation of Cal. Civ. Code § 1788.13(e).
21

22 20. Defendants did not comply with the provisions of Title 15, § 1692 of the
23 United States Code, in violation of Cal. Civ. Code § 1788.17.
24

25 21. Plaintiff is entitled to damages as a result of Defendants’ violations.
26
27
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COUNT II**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**
47 U.S.C. § 227, et seq.

22. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

23. Without prior express consent, Barclays contacted Plaintiff by means of
automated telephone calls and/or prerecorded messages at a cellular telephone in
violation of 47 U.S.C. § 227(b)(1)(A)(iii).

24. Alternatively, if at one time Barclays had prior express consent to contact
Plaintiff, it no longer had consent to contact him after he revoked consent on or about
August 1, 2014; therefore, Barclays' automated telephone calls and/or prerecorded
messages to Plaintiff's cellular telephone were placed in violation of 47 U.S.C. §
227(b)(1)(A)(iii).

25. Barclays continued to place automated calls and/or prerecorded messages
to Plaintiff's cellular telephone after knowing that it lacked consent to call his number.
As such, each call placed to Plaintiff was made in knowing and/or willful violation of
the TCPA and is subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

26. The telephone number called by Barclays was assigned to a cellular
telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47
U.S.C. § 227(b)(1).

27. The calls from Barclays to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

28. Upon information and belief, Barclays' telephone system has the capacity to store numbers in a random and sequential manner, and Barclays used its system to place the calls at issue.

29. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B).

30. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants as follows:

- A. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- B. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- C. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- D. Punitive damages; and
- E. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

3 | DATED: September 8, 2014

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Moe Darbandi